IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

CIVIL APPLICATION NO.1567 OF 2005

IN

SECOND APPEAL NO.86 OF 2004

Sou.Kamal Bapu Pandhare. ... Applicant(Orig.Respdt.1)

vs.

1. Pandurang Bhagwan Lavte & another. ...Respondents.

Mr.G.S.Godbole, for Applicant.

Mr.A.A.Kumbhakoni, for Respondents.

AND

CIVIL APPLICATION NO.1568 OF 2005

IN

SECOND APPEAL NO.86 OF 2004

Pandurang Bhagwan Lavte & others. ... Applicants

vs.

1.Sou.Kamal Bapu Pandhare & another. ...Respondents.

Mr.A.A.Kumbhakoni, for Applicants.

Mr.G.S.Godbole, for Respondents.

CORAM: D.G.DESHPANDE,J.

DATED: 29th September,2005

P.C.:-

1. The learned Advocates for the Applicants and the Respondents are present. The Civil Application no.1568 of 2005 is taken out by the applicants for bringing the legal heirs of deceased-original appellant on record and for condonation of delay. The civil application no. 1567 of 2005 is taken out by the Respondents for dismissal of the appeal as abated for not bringing L.Rs of the sole appellant on record within time.

2. Admittedly, if the first application of the applicants i.e. C.A.no.1568 of 2005 is allowed, the second application would not survive. The appellant is original defendant no.1. The suit was for the accounts, partition and for possession. The trial Court has dismissed the suit. The district Court partly allowed the appeal and therefore, this appeal. Considering the issues involved, the application for bringing L.Rs on record is allowed. However, because of delay, the respondents are required to be compensated by costs. Therefore, I proceed to pass the following order:-

(i) The Civil Appln.no.1568 of 2005 is allowed. The delay for filing of the application is condoned. The abatement if any is set aside.

The appellants to pay cost of Rs.1500/- to the Respondents within a period of two weeks from today. The payment of cost is condition precedent.

(ii) As the civil application no.1568 of 2005 is allowed, the civil application no.1567 of 2005 of the Respondents is required to be dismissed and it is accordingly dismissed.

Amendment to be carried out within a period of two weeks from today. Put up the matter on 13.10.2005 for admission.